

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 89-5

Date issued: April 21, 1989

Requested by: Doug Eiken, Director
Parks and Recreation Department

- QUESTION PRESENTED -

Whether the Little Missouri Scenic River Commission may regulate activities affecting the Little Missouri River.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the Little Missouri Scenic River Commission may not regulate activities affecting the Little Missouri River.

- ANALYSIS -

All governmental power is vested in the Legislative Assembly except that which the assembly grants to other departments of government. See State ex rel. Johnson v. Baker, 21 N.W.2d 355, 358 (N.D. 1945). In particular, governmental bodies "have only such authority as is expressly given them by the constitution and statutes together with those powers and duties which are necessarily implied from the express grant of authority. Am. Fed. of State, County, & Municipal Employees v. Olson, 338 N.W.2d 97, 100 (N.D. 1983).

The Little Missouri Scenic River Commission is a governmental body. The legislative act creating the Commission defines the Commission's authority. Any action beyond the authority conferred by the enacting statute is ultra vires. 1A N. Singer, Sutherland Statutory Construction ' 31.02 (4th ed. 1985 rev.).

The Commission's charter is N.D.C.C. ch. 61-29, enacted in 1975 and entitled to Little Missouri State Scenic River Act. 1975 N.D. Sess. Laws ch. 576. The Act's purpose is to preserve the Little Missouri River in its natural state and to establish a Little Missouri Scenic River Commission. N.D.C.C. ' 61-29-02. The Commission's responsibilities are defined in N.D.C.C. ' 61-29-05:

The commission may advise local or other units of government to afford the protection adequate to maintain the scenic, historic, and recreational qualities of the Little Missouri River and its tributary streams. The commission shall also have the power and duties of promulgating management policies to coordinate all activities within the confines of the Little Missouri River when such action is deemed necessary.

The first sentence of this statute does not give the Commission regulatory

authority over activities affecting the Little Missouri River. This sentence says the Commission is an advisory body. The second sentence provides that the Commission has the power "of promulgating management policies to coordinate all activities within the confines of the Little Missouri River." This sentence is not entirely clear and a question arises whether the authority to promulgate "management policies" gives the Commission regulatory authority to control activities affecting the Little Missouri River.

Sentences of a statute should not be read in isolation; they should be read in light of the entire statute. Thus, the clarity of the first sentence of N. D. C. C. ' 61-29-05 may be used to help understand the second sentence.

The first sentence expressly limits the Commission to an advisory role. The second sentence authorizes the Commission to promulgate "management policies," which means the Commission may adopt nonbinding guidelines and recommend them to other governmental bodies. This interpretation of the second sentence gives effect to the words of that sentence and is consistent with the first sentence.

This interpretation of the statute is also supported by its legislative history, which may be used to determine legislative intent when a statute is ambiguous. N. D. C. C. ' 1-02-39(3).

The legislative history of House Bill No. 1172, the bill that proposed enactment of N. D. C. C. ch. 61-29, makes it clear that the bill proposed an advisory, not a regulatory, role for the Commission. Senator Smykowski stated there was no fiscal note for House Bill No. 1172 and "that the commission would have only advisory duties." Hearings on H. 1172 Before the Senate State and Federal Gov't Comm., 44th Leg. (1975) (Statement of Senator Smykowski). The history also contains the following statement (though it is unclear who made the statement): "Section 5 [now ' 61-29-05] refers to the new commission and says that the commission will coordinate all activities and bring problems to the attention to the proper state agencies. They are not asking for statutory authority; they would advise other units of government." Hearings on H. 1172 Before the Senate State and Federal Gov't Comm., 44th Leg. (1975).

Jack Neckels, director of the State Planning Division, testified on behalf of the bill. He said he was a part of the committee that drafted the bill and the the bill "does not overlap or duplicate enforcement responsibilities. But rather, the legislation assumes maximum local input into the future management for the protection of the Little Missouri River." Hearings on H. 1172 Before the House State and Federal Gov't Comm., 44th Leg. (1975) (Statement of Mr. Neckels).

Before 1977 the Bank of North Dakota had authority over sovereign lands. N. D. C. C. ' 47-06-08 (before it was amended in 1977). In 1977, however, N. D. C. C. ch. 15-08.2 was enacted. N. D. C. C. ch. 15-08.2 gives the Board of University and School Lands management authority over sovereign lands. 1977 N. D. Sess. Laws ch. 144. Sovereign lands include the beds of such navigable rivers as the Little Missouri River. N. D. C. C. ' 15-08.2-02. The Land Board

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has specific authority to "promulgate rules and regulations for the . . . management of the [sovereign] lands." N.D.C.C. ' 15-08.2-08. (I note, however, that Senate Bill No. 2328, which was enacted by the present Legislative Assembly, transfers certain management responsibilities over sovereign lands from the Land Board to the State Engineer.)

In summary, the Land Board and the Little Missouri Scenic River Commission have distinct functions. The Commission may adopt advisory policies for consideration by regulating bodies. The Land Board, on the other hand, has specific regulatory authority over activities affecting the Little Missouri River. The Land Board and other regulating bodies, however, are to recognize that the Commission has an important role to play in managing the river. The Commission, because of its composition, is able to provide a unique local perspective on management issues. Therefore, regulating bodies should carefully consider the Commission's recommendations.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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